

KEY PROVISIONS OF THE FAIRFAX COUNTY

AFFORDABLE DWELLING UNIT (ADU) ORDINANCE

(Effective July 1, 2002)

Purpose and Intent (2-801): To assist in the provision of affordable housing for persons of low and moderate income whose income is seventy percent or less of the median income for the Washington Standard Metropolitan Statistical Area. Where the affordable dwelling units differ in design and unit type from the other units in a development the affordable units should be integrated within the development to the extent feasible and where the unit type is the same the affordable units should be dispersed throughout the development.

Applicability (2-802): Applies to all developments which are subject to rezoning, special exception, site plan or subdivision plat approval where:

- The site is to be developed at a density greater than one (1) dwelling unit per acre,
- The site yields fifty (50) units or more,
- The site is located within an approved sewer service area.

Residential projects for which these criteria are not applicable may still provide affordable dwelling units at the developer's option in order to take advantage of zoning district regulations applicable to affordable dwelling units. All affordable dwelling units must be of the same structure type as the rest of the units in such developments.

Developments Exempt from the Affordable Dwelling Unit Program (2-803):

- Any multiple family dwelling unit or housing for the elderly structure with four stories or more and having an elevator.
- Rezoning and special exception applications or amendments thereto, approved before July 31, 1990, which are subject to the following:
 - Proffered or approved generalized, conceptual, or final development plans or development plans or special exception plats which contain a lot layout,
 - A proffered or approved total maximum number of dwelling units, or FAR,
 - A proffered or approved unit yield per acre that is less than the number of units per acre otherwise permitted by the zoning district regulations.
- Amendment applications filed after 12:01 a.m., July 31, 1998 which deal exclusively with issues of building relocation, ingress/egress, storm water drainage or other engineering or public facilities issues, the preservation of historic structures, child care facilities, changes in the size of units, a reduction in the number of units, or a change in unit type which proposes no increase in density over previous approvals, or which request the addition of a special exception or special permit use.
- Amendment applications filed after 12:01 a.m., March 31, 1998, which add land area to a previously exempt development, provided such additional land area shall be subject to Sect. 2-802.

- Site plans filed and preliminary subdivision plats approved on or before July 31, 1990, provided that the conditions of 2-803 (5) are met.

Affordable Dwelling Unit Adjuster (2-804):

- For single family attached or detached units:
 - A 20% increase in the upper and lower end of the density range permitted in the Comprehensive Plan.
 - Up to 12.5% of all units to be built on site are to be affordable dwelling units based on a sliding scale which relates the percentage of ADUs required to the density above the low end of the density range in the Comprehensive Plan actually achieved. For developments where affordable dwelling units are optionally provided the percentage is fixed at 12.5 percent.
- For non-elevator multiple family units or elevator multiple family unit structures of three stories or less:
 - A 10% increase in the upper and lower end of the density range permitted in the Comprehensive Plan.
 - Up to 6.25% of all units to be built on site are to be affordable dwelling units based on a sliding scale which relates the percentage of ADUs required to the density above the low end of the range in the Comprehensive Plan actually achieved. For developments where affordable dwelling units are optionally provided the percentage is fixed at 6.25 percent.
- Where the total number of dwelling units to be produced is at or below the low end of the density range specified in the adopted Comprehensive Plan prior to the application of bonus density permitted for affordable dwelling unit developments no ADUs are required and the special zoning district regulations for ADU developments do not apply.

Specifications (2-809): The Fairfax County Redevelopment and Housing Authority is designated to develop specifications for the prototype units to be produced and to provide advice on the pricing of those units. The specifications are to be reviewed and approved by the Affordable Dwelling Unit Advisory Board (ADUAB). Specifications have been adopted and periodically revised.

Establishment of Prices for Sale and Rental Units (2-810 and 2-811): The County Executive is designated to set prices and rents with appeal to the Board of Supervisors. Rents for multiple family units are set by a formula specified in the ordinance. Prices and rents have been established and are revised on an on-going basis, per the Ordinance provisions.

Administration of For Sale Affordable Units (2-810, 2-812 and 2-813):

- The price of units sold on or after March 31, 1998 is controlled for 15 years. The control period for units sold prior to March 31, 1998 may be modified to be 15 years from that date, if the owner so elects; otherwise it is 50 years. This is reflected in a Covenant that must be recorded on the development before any units are offered or sold.
- Fairfax County Redevelopment and Housing Authority (FCRHA) has the exclusive right to purchase up to 1/3 of the affordable units in a development.
- The remaining 2/3 and any units not purchased by the FCRHA are offered to people who meet eligibility criteria set by the FCRHA.

- The FCRHA and designated non-profit organizations have a right to purchase unsold ADUs at specified points during the 90 day period.
- The FCRHA also has an option to acquire units offered for resale after 30 days and a first right of refusal to acquire a unit at the first sale following expiration of the control period.
- Purchasers must occupy the unit as their domicile and provide an affidavit of continuing occupancy to the FCRHA on an annual basis.
- At the first sale or resale after the expiration of the control period one half of the difference between the net sales price and the initial price plus the gain permitted during the control period must be contributed to the Housing Trust Fund to promote the development of affordable housing.

Administration of Rental Affordable Units (2-811, 2-812 and 2-813):

- The Fairfax County Redevelopment and Housing Authority has the right to lease 1/3 of the affordable single family attached or detached units.
- In multiple family developments, 1/3 of the affordable units are to be leased to eligible households at rents affordable to households with incomes up to 50% of the Metropolitan Statistical Area median, with state or local subsidies, and the balance of the affordable units to those who meet program income criteria (70% of median).
- The rental of units initially leased on or after March 31, 1998 is controlled for 20 years. The control period for ADUs rented prior to March 31, 1998 may be modified to be 20 years from that date if the owner so elects; otherwise it is 50 years. However, for multiple family rentals, after the initial 10 years of the control period, owners of rental properties are able to be released from the requirements of the Ordinance by providing notice and paying to the Fairfax County Housing Trust Fund an amount equivalent to the then fair market value of the land for all bonus and affordable dwelling units and providing relocation assistance to the tenants of affordable dwelling units. The controls will be incorporated in a covenant to be recorded before the first residential use permit for the development is issued.
- Tenants leasing affordable units must meet program eligibility requirements, must occupy the unit as their domicile, may not sublease the unit and must annually verify to the landlord that they continue to meet income and other eligibility requirements. If tenant no longer meets eligibility requirements, fails to provide an affidavit of continuing occupancy, or fails to occupy the unit for a period in excess of 60 days without prior approval, then the lease terminates. However, in any of these cases the landlord may designate another comparable unit as an affordable unit in lieu of terminating the lease.
- Owners of developments with affordable rental units must submit a monthly status report concerning the number of affordable units which are vacant or leased and the tenants occupying the units.

Phasing of Affordable Dwelling Units to Market Rate Units (2-808):

- For single family detached or attached developments residential use permits (RUPs) must be issued for all affordable dwelling units before building permits for more than 75% of the market rate units will be issued. Building permits for up to 90% of the market rate units can be allowed by the Zoning Administrator if the ADUs are distributed throughout the development and 75% of the RUPs for the ADUs have been issued at the time of the request. All 100 percent of the Building Permits can be issued by the Zoning Administrator if it can be

demonstrated that this is necessary for the construction of the affordable dwelling units. Bonds and agreements for developments where this relief has been granted shall not be released until all of the ADUs have received RUPs.

- A development which is comprised solely of rental multiple family units shall not be subject to these limitations. However, such developments must submit and have executed a completed Notice of Availability and Offering Agreement prior to the issuance of the first RUP for the development.
- For multiple family developments, RUPs must be issued for all affordable dwelling units before RUPs will be issued for more than 75% of the market rate units. RUPs for up to 90% of the market rate units can be allowed by the Zoning Administrator if the ADUs are distributed throughout the development and 75% of the RUPs for the ADUs have been issued at the time of the request.

Affordable Dwelling Unit Advisory Board (2-814):

- Comprised of 9 members:
 - 2 Engineers or Architects,
 - 1 Lender,
 - 1 From Fairfax County Department of Housing and Community Development,
 - 1 Builder of single family detached or attached developments,
 - 1 From Fairfax County Staff,
 - 1 From a non-profit housing group,
 - 1 citizen.
- Responsibilities:
 - Hears and grants requests for modifications to the Program,
 - In extenuating circumstances may permit the substitution of land or cash for the provision of units,
 - No authority to modify or reduce the Affordable Dwelling Units adjuster,
 - No authority to modify the unit specifications,
 - Provides advice on sales and rental prices.

Subsequent Zoning Ordinance Amendment (2-805): In order to accommodate the provisions of the ADU program, other amendments to the Zoning Ordinance were required addressing unit type, open space, lot sizes, and bulk regulations for developments which include ADUs.

Effective Date of the Ordinance (2-821): The effective date was July 31, 1990. Amendments were adopted, effective March 31, 1998 and July 1, 2002.

Amendment of Subdivision Ordinance: In order to conform with the state legislation approving the ADU Program, the Subdivision ordinance has been amended to provide that subdivision plats proposing

development or construction of ADUs shall be processed within 280 days from receipt provided that such plats substantially comply with ordinance provisions when submitted.